United States Court of Appeals

for the Second Circuit

REPLY BRIEF

76-2025

To be argued by
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RIGOVERTO GARCIA,

Appellant,

-against-

VITO TERNULLO, Superintendent,

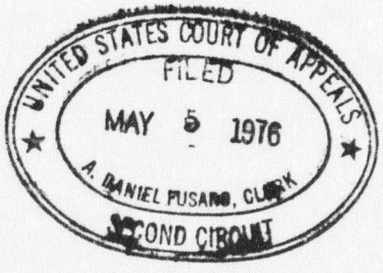
Appellee.

Docket No. 76-2025

B
P/S

REPLY BRIEF FOR APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
RIGOVERTO GARCIA
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RIGOVERTO GARCIA, Appellant, -against- VITO TERNULLO, Superintendent, Appellee.	Docket No. 76-2025

REPLY BRIEF FOR APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

The State argues that the factual findings of the State court are presumed to be correct, that the burden is on petitioner to establish that these findings are incorrect, and that petitioner has failed to carry this burden or show the existence of any of the statutory exceptions to 28 U.S.C. §2254(d). State's Brief at 13-14. The argument is beside the point, since appellant Garcia does not request a new evidentiary hearing. Compare United States ex rel. Cronan

v. Mancusi, 444 F.2d 51 (2d Cir. 1971). The facts found by the State court are not disputed. It is clear that a Federal judge in a habeas corpus proceeding must independently apply Federal law to a State court's finding of fact:

> Although the district judge may, where the state court has reliably found the relevant facts, defer to the state court's findings of fact, he may not defer to its findings of law. It is the district judge's duty to apply the applicable federal law to the state court fact findings independently. The state conclusions of law may not be given binding weight on habeas.
>
> Townsend v. Sain, 372 U.S. 293, 318 (1963).

Accord, United States ex rel. Stanbridge v. Zelker, 514 F.2d 45, 51 (2d Cir. 1975); United States ex rel. Holes v. Mancusi, 423 F.2d 1137, 1141 (2d Cir. 1970).

Here the District Court failed to re-examine the constitutional significance of the facts developed in State court (see Appellant's Brief at 6). Such an independent application of Federal law, would have indicated that renewed Miranda warnings were necessary and that suppression of appellant's inculpatory statement was required by the Supreme Court's decisions in Miranda v. Arizona, 384 U.S. 436 (1966), and Michigan v. Mosely, 423 U.S. 97 (1975), and this Court's opinions in United States v. Gaynor, 472 F.2d 899 (2d Cir. 1973), and United States v. Collins, 462 F.2d 792 (2d Cir. en banc 1972) (Appellant's Brief at 7-13).

CONCLUSION

For the foregoing reasons and the reasons set forth in appellant's main brief, the order of the District Court must be reversed and the writ of habeas corpus issued, releasing appellant Garcia from custody unless he is retried within sixty days.

Respectfully submitted,

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
RIGOVERTO GARCIA
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.

May 5, 1976

Certificate of Service

May 5, 1976

I certify that a copy of this reply brief ~~and appendix~~ has been mailed to the Attorney General of the State of New York.

Nathan Silberman